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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF OKLAHOMA

FILED
MAR 08 2017
Mark C. McCartt, Clerk
U.S. DISTRICT COURT

Alesia Wright,
Plaintiff

vs

Case Number: ____________________

USCC Services, LLC,
Defendant

17 CV 116 JED - FHM

COMPLAINT

I. PARTIES

1) I, Alesia Wright, am a citizen of Oklahoma who presently resides at 1811 N. Eucalyptus Ct., Broken Arrow, OK 74012.

2) Defendant, Kenneth R. Meyers, is a resident of Chicago, IL, and is employed by USCC Services, LLC as the President and CEO serving as the "representative" on behalf of USCC Services, LLC. The location of discrimination occurred at the US Cellular Customer Care Center at 4750 S. Garnett Rd., Tulsa, OK 74146.

II. JURISDICTION

1) Jurisdiction is asserted pursuant to 28 U.S.C. § 1331, involving federal questions originating from the Americans with Disability Act and the Equal Employment Opportunity Commission Guidelines, *Supra.*(Specific laws under aforementioned federal regulations to be discussed in in detail and established in proceeding petition).

2) Jurisdiction is also asserted pursuant to 28 U.S.C § 1332, involving diversity of citizenship of parties.
   a) I, the Plaintiff, Alesia Wright, is a citizen of the State of Oklahoma.
   b) The defendant, USCC Services, LLC, is incorporated under the laws of the State of Illinois, has its principal place of business in the State of Illinois, and the customer care center where the incident occurred operates in the State of Oklahoma.

IFP
Summons

III. SUMMARY OF CLAIM

1) On October 11, 2010, I was hired as a Customer Service Representative with US Cellular, with no issues, impairments, nor disabilities preventing me from fulfilling the duties required to operate in the Customer Service Representative role.

2) In 2011, I began training for leadership to prepare for my development path that was to lead to a position in "Associate Relations" (currently dissolved within the company, and fully replaced by the Human Relations Department). My next step in development was to enter Pipeline. To prepare, I:
    a. participated in "Peer Mentoring" (twice);
    b. led team huddles for existing coaches in their absence;
    c. led "Motivational Minutes" before shifts on my personal team, as well as, coaches that were absent;
    d. went through formulated curriculum developing specific leadership qualities, particularly "accountability", through reading, *Winning with Accountability* by Henry J. Evans; and
    e. assisted in developing a fellow peer, Christina Inman, during the absence of her late coach, in addition to intermittently performing the duties of my existing Customer Service role.

(My [self-motivated] leadership development training continued until my disability, and is documented in comments by my supervising coach, Cathey "Lavell" Weast, on yearly and quarterly reviews from 2014, as well as reflected in my 2014 achieved yearly goal).

3) In February 2015, I began treatment for a severe ear infection, severe migraines, and additional symptoms. Despite being advised by the attending urgent care physician to be off work, I continued to work, due to the inability to cover missed time in accordance with the policies and procedures regarding "leaves of absence". Feeling I had no options, I continued to work in my horrible condition until March 31, 2015. It was then, that I learned through Dr. Puckett, Ear Nose & Throat (ENT) Specialists at Warren Clinic, that three-fourths of my ear drum had mysteriously disintegrated. (It was not perforated during my visit to urgent care in beginning of March 2015).

4) On August 12, 2015, I had successful surgery to graft my left ear drum, completed by Dr. Evan Moore, ENT Specialist at Eastern Oklahoma Ear, Nose, and Throat Specialist. However, at a succeeding ENT follow up appointment and audiology testing, it was confirmed I had suffered hearing loss; resulting in my ability to hear certain pitches. I was released back to work on August 31, 2015, with a restriction.

These events lead into the contested questioning of Federal Statutes as amended under the Americans with Disability Act of 1991 and EEOC Guidelines, *supra,* arising to violations, for which, I have a complaint against the Defendant, and are outlined in the subsequent COUNTS (I-IV).

IV. QUALIFICATION TO MEET DISABILITY REQUIREMENT

1) Pursuant to 42 U.S.C. § 12012(2), a "disability" is defined as "a physical or mental impairment that substantially limits one or more major life activities", and in my unique situation is defined in the inability for me to utilize any telecommunication device (auditory device) for more than 3 hours a day. This claim is supported through medical documentation from a medical expert, Dr. Alhang Konyak. The "major life activity" I am limited in, is the ability to utilize auditory and telecommunication devices, including but not limited to, telephones, for an extended period of time. Signifying trauma to my auditory system, that is irreversible.
    a. This "disability" and ensuing medical restriction is not exclusive to the work environment, and extends to general life activities such as listening to music through a headset, utilizing a standard home phone, the need to utilize the speaker and Bluetooth options majority of my time spent on a cell phone (including when in public), and results in massive migraines, plus frequent ear infections.
    b. I am further substantially limited by my incurred "disability" in that it not only limits my ability to occupy specific positions in a "call center" environment, it limits my ability to work in a broad range of positions I previously was able to occupy. In addition, my disability qualifies me as an individual eliminated from positions that require the utilization of telecommunication devices in excess of three hours. I cannot, for example, operate in the following positions as a result:
        i. Receptionist;
        ii. Scheduler;
        iii. Transcriptionist;
        iv. Dispatcher;
        v. Legal or Office Administrator that disallows the use of a "speaker" option for telecommunications, opposed to the traditional handset and headset; or, and not limited to,
        vi. Any positions that require consistent use of a handset or headset beyond 3 hours daily.

In accordance, my claim is further substantiated under *Allen v. South Crest Hosp.,*455 F. App'x 827, 834-35 (10th Cir. 2011), affirms the requirement that an employee must be "significantly restricted in the ability to perform either a class of jobs or a broad range of jobs in various classes as compared to the average person having comparable training, skills, and abilities" to be considered disabled in the major life activity of working. See also *Rakity v. Dillion Cos.*, 302 F. 3d 1152 (10th Cir. 2002); *Nielsen v. Moroni Feed Co.*, 162 F 3d 604 (10th Cir. 1998); and *Dilley v. SuperValu, Inc.*, 296 F 3d 958 (10th Cir. 2002),

2) Pursuant to 42 U.S.C. § 12111(8-9), the ADA requires employers to make "'reasonable accommodations' for disabled employees who could , with reasonable accommodation, do the 'essential functions' of their position", and provides a list of "reasonable accommodations" including but not limited to "modifying equipment and facilities; restructuring a job; modifying work schedules; modifying examinations, training materials or policies; providing readers or interpreters; and reassigning the employee to a vacant position."
   a. Furthermore, *Smith v. Midland Brake, Inc.*, 180 F. 3d 1154, 1162 (10th Cir. 199), asserts "reassignment is available for an employee who is qualified for the position he or she would hold after reassignment". By removing the limitation on "reasonable accommodation", being restricted and limited to the active position (Customer Relations, now "Solutions Consultant" which was altered after my leave of absence), which I held at the time of my "disability" is not grounds for compliance to adhering to the federal regulations of the ADA or EEOC. This upholds the notion that other positions within the company, I potentially qualified for, were able to fulfill legal requirements for Statute 42 U.S.C. § 12111(8).
   b. Reassignment is also clarified as a requirement after determination has been made that "there are no effective accommodations that will enable the employee to perform the essential functions of [their] current position. See EEOC, Enforcement Guidance, *supra.*

V. CAUSE OF ACTION

I allege the following:

COUNT 1

1. The Defendant violated ADA Statute 42 U.S.C. § 12111(8-9) when upon my release back to work on August 31, 2015, said Defendant immediately denied my initial return to work request after receipt of medical restriction pertaining to my inability to labor on telecommunication devices for a full work shift (8-10 hours). The Defendant did not fully seek out "all resources and options" prior to sending a "denial" of "disability accommodation" as documented by the Reed Group, the FMLA manager and facilitator for US Cellular, in September of 2015.

a) According to *Dalton v Subaru-Isuzu Automotive, Inc.*, 141 F.3d 667 (7th Cir. 1998); *Canny v Dr.Pepper/Seven-Up Bottling Group, Inc.*, 439 F.3d 894 (8th Cir. 2006); *Mengine*, 114 F.3d 415; *Hendricks-Robinson v Excel Corp.*, 154 F.3d 685 (7th Cir. 1998) it is held and confirmed that an employer is responsible for "identifying the full range of alternative positions for which the individual" could potentially qualify for, plus, not "exclude an entire class of positions from its search criteria". US Cellular did not adhere to this policy in the initial phase of me returning from work.

b) They did not consider Resolutions, Web Chat, nor the Social Media departments as options, which would each meet the initial request for accommodation supplied to the Defendant, in accordance to *Fraiser v. Simmons*, 90 F. Supp. 2d 1221, 1225 (D. Kan. 2000).

c) This claim also establishes a "reasonable timeframe" and "scope of options", to assess all opportunities for reassignment, is not limited to one week, one department, nor geographical region as outlined in the EEOC, Enforcement Guidance, *supra*. The ADA further defines that the employers search must include "significant time and effort" plus conducts a "conscientious and thorough intra-company search" to find a position for a "reasonable accommodation", which the Defendant failed to do when they did not consider near future opening vacancies. See *Malabara v. Chicago Tribune Co.*, 149 F.3d 690 (7th Cir. 1998).

COUNT II

2. In "competing" for an Administrative position through the typical application process, the Defendant violated EEOC, Enforcement Guidance, *supra*. This regulation positions that an employer must not require an employee seeking "reasonable accommodation" to compete for reassignment. This also confirms that "the employee gets the vacant position if s/he is qualified for it" and otherwise "would be of little value", causing this regulation to not be carried out as "Congress intended". According to my filed resume, in the Defendant's possession, I met qualifications for the Administrative Assistant position.

   a) Furthermore, *Smith v Midland Brake, Inc.*, 180 f.3d 1154 (10th Cir. 1999) and *Ransom v Arizona Board of Regents*, 983 F. Supp. 895 (D. Ariz. 1997) confirm that reassignment obligation indicates "something more than merely allowing a disabled person to compete equally with the rest of the world for a vacant position" and has "a right to the reassignment, and not just to the consideration process leading up to the potential reassignment". In addition, the EEOC and ADA "does not require the employee to be the 'best qualified' employee for the vacant position."

b) Furthermore, my responsibilities at the time of disability exceeded the responsibilities of the Administrative Assistant position, further confirming my ability to complete the task in the vacant positions.

COUNT III

3. Defendant further failed to adhere to regulations after my interview results for the Administrative Assistant position were delivered by Robin Hoppes, the Human Relations Manager in the Tulsa Customer Care Center. After suggestion to enter into leadership by the interviewing party was made, I was denied the opportunity to apply for pipeline (the process to enter into leadership), despite continuous documented evidence of my ability to complete and fulfill the requirements. There is evidence to support I operate in the active role of a supervising coach, when asked to assist in "developing" a peer, Christina Inman, as aforementioned and outlined in the section titled "Summary of Claim". In *Sacco v. Secretary of Veterans' Affairs.*, 2006 WL 2709749 (W.D. Pa. Sept. 20, 2006), an "employee requested to be reassigned to a higher-graded position that she previously [operated in]. The court noted there was no authority stating that a promotion could never be a reasonable accommodation, held that the accommodation could be reasonable. The court upheld that the employer at least had a duty to explore the possibility of providing the transfer without a salary increase.

a) I previously "operated" in the role of a coach; participated in "Peer Mentoring" (twice); led team huddles for existing coaches in their absence; led "Motivational Minutes" before shifts on my personal team, as well as, coaches that were absent; went through formulated curriculum to develop specific leadership qualities, particularly "accountability", through reading *Winning with Accountability* by Henry J. Evans, and continued my leadership development as evidenced by my yearly goals; put into practice what I learned; and therefore certifies my ability to fulfil functions of the role.

b) US Cellular, based on this case law, should have considered allowing me the ability to formally apply considering the many pre-requisites I actively engaged in. There is no basis for the assumption that I would "fail" the process as asserted by the Defendant. On the contrary, I was obstructed multiple times on behalf of US Cellular in my ability to complete my development process, such as, contradictory performance evaluations, being made responsible for metrics and items I have no control over, and burdening me with metrics that were not listed in policy as an "official" metrics nor contained a formal plan of corrective action (Engagement time).

c) Moreover, the defendant outlined in their *Equal Opportunity and Affirmative Action Policies*, revised April 8, 2015 (effective after I began STD leave on April 2, 2015) under subsection, Application of Equal Opportunity and Affirmative Action Policies, that "the company's Equal Opportunity and Affirmative Action policies require that employment decisions be based only on valid job requirements, and extend to all terms, conditions, and privileges of employment including, but not limited to, recruitment, selection, compensation, benefits, training, promotion, and disciplinary actions", signifying promotion was an option the Defendant defined as an allowable remedying of an complaint, and is subject to interpretation to include "disability accommodation" as set forth in the policy.

COUNT IV

4. Additionally, I remained on the job while seeking relief as determined by *Fischer v. Forestwood Co.*, 525 F.3d 972 979 (10th Cir. 2008). I initiated all interactions, including the ones I was not responsible for between Reed Group and US Cellular, as outlined in *Smith v. Midland Brake, Inc.*, 180 F.3d 1154 (10th Cir. 1999) and documented in Reed Group's system. Furthermore:

   i. I initiated my Short Term Disability (STD) leave;
   ii. I complied with the excessive request for extensions, in which my presiding medical examiner approved at the beginning of my STD claim, but wasn't fully accepted by Reed Group on behalf of US Cellular;
   iii. I followed up on STD extensions because US Cellular would never do their part and call Reed;
   iv. I proactively sought out options for accommodation prior to August 21, 2017;
   v. After I was notified of denial of the initial request for accommodation, I used the internet to access job descriptions that I should have been able to access from the intranet. However, I was not able to, due to my information being inactive internally. Despite requests to the coach, Ronda Wise, was not able to request account re-activations(June-September 2015). Only the Human Relations department was able to do that;
   vi. I requested the ability to be considered for the Administrative Assistant position. Collaborated with my attending physician to see if

that would be liable option. I then received approval for revised medical restriction;

vii. I had to call two weeks after the interview to see what was the update for my requisition of the Administrative Assistant position; and

viii. I discussed long term disability, as it seemed to be the only and final option available as presented by Defendant.

a) After discussing Long Term Disability (LTD) as an accommodation effort, I safely assumed there were no other options available for "reasonable accommodation" due to the nature of the option in itself. The Defendant had already filled out the *LTD Employer Statement* and sent it to Prudential Insurance Company of America (Prudential). After speaking to a representative with Prudential, I was advised that I would no longer be able to work in any capacity if I continued with the option of LTD, which I confirmed through the Social Security Administration. I was left with minimal options, and had been fighting at every opportunity to innovatively create options, in order to not separate from the company. I was on Unemployment at this time, due to the failure of the Defendant's ability to secure a "reasonable accommodation" and spent nearly three months being dragged through a process that was not given full devotion, nor whose options were being fully explored.

i. Pursuant to *Sanchez v. Hewlett-Packard Co.*, 305 F.3d 1210, 1221 (10th Cir. 2002), which claims the "Plaintiff must show s/he had no other choice but to quit", my claim through the aforementioned assertion is valid grounds to prove I was limited in my options. The last resort, LTD, for "reasonable accommodation" had been initiated, implying the Defendant had no other options.

ii. In addition, I found it unethical to fill out the forms for LTD, asking my facilitating care physician to fill out forms asserting I was "permanently or totally disabled" as outlined in my *Release to return to work*.

iii. I currently still experience migraines, tinnitus, ear infections, sensitivity to weather changes, water, wind, certain sounds and noises, or loud music, have to go over information at a slower pace to ensure understanding, when I previously caught on very quickly, and my vocabulary has been impacted causing me to consciously struggle to remember certain words that previously flowed to me, allowing me to speak more fluently and convey my thoughts. These experiences render me unable to complete certain tasks and life activities, but does not render me "totally and permanently" disabled.

iv. It is for this reason I resigned my employment with the Defendant on December 15, 2015.

VI. HARDSHIPS

I have endured many hardships as a result, namely:

1) Exclusion from vast majority of occupations in the workforce (I cannot work in any occupation that requires more than 3 hours of being on the phone daily)
2) Seclusion to occupations outside of my skillset, and with low pay (preventing me from being able to survive, unless I take up more than one job) or occupations in the professional skillset, which I have aspired to obtain
3) Migraines
4) Sensitivity to weather changes, water, wind, certain sounds and noises, or loud music
5) I have to go over information at a slower pace to ensure understanding, when I previously caught on very quickly
6) My vocabulary has been impacted causing me to consciously struggle to remember certain words that previously flowed to me, allowing me to speak more fluently and convey my thoughts
7) Constant ringing in my ear
8) I lost my place of residence in November 2015 as a result of this situation
9) Inability to pay for basic necessities for everyday living while still employed at US Cellular and after resignation
10) I had to file unemployment while still employed by US Cellular to pay bills
11) Depression
12) Stress
13) Low self-esteem
14) Impacted the quality of life for my daughter (as I am a single parent)

VII. REQUEST FOR RELIEF

I believe that I am entitled to the following relief:

1) Lost Wages in the amount of: $53,049.60
    a. cover time released to work August 31, 2015-present

    *Subtracting claimable mitigated damages: -$11,057
    a. including employment, unemployment, and pursuant to 2017 IRS tax return

2) Future Wages in the amount of: $424,396.80

a. equivalent to 12 years wages; time plausible to secure employment at equivalent pay rate I was receiving at the time of disability. I must obtain a degree to find competitive pay. This also calculates the approximate time it will take to complete necessary education requirements.

3) Punitive monetary Reward: $300,000
   a. Reflective of all the emotional distress I have experienced, but not limited to, life restriction, and hardships experienced as a result and discussed under HARDSHIPS

4) **Total monetary relief sought: $766,389.40**

Internal Operational Changes sought as additional remedy relief:

5) Train associates on ADA and EEOC policies, then follow up with a yearly refresher. That they make all necessary policy changes compliant with the ADA and EEOC to prevent what happened to me from happening to anyone else. They must specifically draft a policy expressing compliance to assist associates in preventing similar medical situations.
6) Provide Request Time Off (RTO) as an option to associates for a medical alternative when other benefit time has exhausted. They must decide what measures would best benefit the company to address the future impact on staffing as a result of the inclusion of RTO (i.e. outsourcing or hiring more associates.)
7) Remove majority of preventable stress factors that will lead to susceptibility to ASD and AT (Acoustic Shock Disorder and Acoustic Trauma or Shock). Not limited to but including, ASD prevention technology for all phone operators, any factors that are beyond the associates control such as engagement time, adherence to breaks and lunches (unless exceptions are available to balance the uncontrollable factors beyond the associates control), and et cetera.
8) All senior leadership and subsequent leadership staff must go through training on Human Relations and focus on the Total Person Approach.
   a. Read "Winning with Accountability" by Henry J. Evans (create a culture of accountability to prevent this in the future)
   b. Read "The Pursuit of Something Better" by Dave Esler and Myra Kruger (revisit what created the DO, and revitalize it, which will help to prevent incidents like what I experienced from happening.)
   c. Teach back all information to associates
9) Outsource for all associate relations concern in order to obtain impartial resolutions, and also prevent any further claims of discrimination or discrepancies between associates and leadership staff (at any level.) The third party organization must be impartial to US Cellular.

I THEREFORE, PRAY, the court attests the merit of my case, attests the assertion of my claim against the Defendant, render a verdict for the monetary award of **$766,389.40** and require the Defendant to adhere to proposed policy changes. I further pray, judgment is found in my favor and according to the law as established according to true and actual interpretation of the federal statutes and regulations in question.

VIII. CERTIFICATION AND CLOSING

Under Federal Rule and Civil Procedure 11, by signing below, I certify to the best of my knowledge, information, and belief that this complaint: (1) is not being presented for an improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation; (2) is supported by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law; (3) the factual contentions have evidentiary support or, if specifically so identified, will likely have evidentiary support after a reasonable opportunity for further investigation or discovery; and (4) the complaint otherwise complies with the requirements of Rule 11.

I agree to provide the Clerk's Office with any changes to my address where case-related papers may be served. I understand that my failure to keep a current address on file with the Clerk's Office may result in the dismissal of my case.

March 8 (month & day), 2017

Alesia M. Wright

Original Signature of Plaintiff

Alesia M. Wright

Printed Name of Plaintiff

1811 N. Eucalyptus Ct.

Current Address

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